IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.N.BASHA

CRL.O.P.No.31604 of 2006
& M.P.No.1 of 2007

K. Sundaaravelu @
K. Balasundaram ... Petitioner

Vs.

1. The Deputy Commissioner of Police,
   Central Crime Branch,
   Egmore,
   Chennai - 600 008.

2. Sub-Inspector Police,
   Central Crime Branch,
   (Land Grabbing Section),
   Thousand Lights Police Station,
   Chennai. ... Respondents

* * *

Prayer : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to direct the second respondent to register the F.I.R. as per the complaint preferred by the Petitioner under Section 156 (3) of Cr.P.C. as per the orders of the Additional Chief Metropolitan Magistrate, Chennai, in Crl.M.P.No.1245 of 2006 dated 27.09.2006.

* * *

For Petitioner : Mr.V.R.Karthikeyan

For Intervener : Mr.M.Sathyanarayanan

For Respondents : Mr.P.Kumaresan
Additional Public Prosecutor

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O R D E R

Mr.V.R.Karthikeyan, learned counsel for the petitioner submitted that the petitioner has come forward with this petition seeking the relief of directing the second respondent police to register the First Information Report as per the complaint preferred by the petitioner before the learned Additional Chief Metropolitan

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Magistrate, Chennai, in Crl.M.P.No.1245 of 2006, dated 27.09.2006 and thereafter the learned Additional Chief Metropolitan Magistrate, referred the matter under Section 156 (3) Cr.P.C. to the first respondent to register the case and to take action and investigate into the matter in accordance with law and to file the final report before the Court.

2. The learned counsel for the petitioner submits that in spite of the specific direction given by the learned Additional Chief Metropolitan Magistrate, Chennai, the first respondent police till date has not registered the case. It is contended by the learned counsel for the petitioner that the order of the learned Magistrate directing the first respondent police to investigate into the matter was passed as early as on 27.09.2006 an till date the petitioner is not able to see the light of the day. The learned counsel for the petitioner further contended that by not registering the case, the first and second respondents have not followed the mandatory requirement contemplated under Section 154 of Cr.P.C. It is submitted by the learned counsel for the petitioner that the petitioner has made out a case for the alleged offence under Section 147, 341, 420, 464, 466 and 506(ii) I.P.C. and there are specific allegations constituting the cognizable offence contained in the complaint dated 27.07.2006.

3. The learned counsel for the petitioner further submits that the petitioner is the absolute owner of the property comprised in Survey No.233, Thirumangalam Village, within the Sub-Registration District of Anna Nagar and the Registration District of North Chennai and the proposed accused persons are illegally encroached the suit property of the petitioner and when the petitioner questioned their illegal activities, the petitioner was threatened with dire consequences. Therefore, it is submitted by the learned counsel for the petitioner that the petitioner is constrained to give a complaint against the proposed accused in this case. It is also contended by the learned counsel for the petitioner that in view of the first respondent not taking any action on the basis of the complaint given by the petitioner, as referred under Section 156(3) of Cr.P.C. by the learned Additional Chief Metropolitan Magistrate, Chennai, the petitioner has put into great hardship and mental torture and agony.

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4. The learned Additional Public Prosecutor submitted that till date the first respondent has not registered case. It is also submitted by the learned Additional Public Prosecutor that the second respondent will proceed in accordance with law on considering the allegation contained in the complaint of the petitioner.

5. Mr.M.Sathyanarayanan, learned counsel for the proposed accused contended that the proposed accused are disputing the alleged allegations and they are nothing to do with the alleged offences as

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alleged by the petitioner and they are having documents to prove their bonafide. It is also submitted by the learned counsel for the proposed accused that in the event of registering the case, the Investigating Agency should also look into the documents to be produced by the proposed accused.

6. I have carefully considered the rival contentions put forward by either side and also perused the entire materials available on record including the affidavit filed by the petitioner and other materials.

7. It is very much painful to note that the police officials in spite of receiving the complaint constituting cognizable offences are not taking any action in accordance with law in this case. It is pertinent to note that the learned Additional Chief Metropolitan Magistrate, Chennai, on the receipt of the complaint preferred by the petitioner herein, referred the complaint under Section 156 (3) of Cr.P.C., to the first respondent to register the case and to take action and investigate into the matter and to file the final report in accordance with law. But the fact remains, unfortunately, till date the first respondent police has not even raised the little finger.

8. The Hon'ble Supreme Court has held in MOHD. YOUSUF V. AFAQ JAHAN reported in 2006 AIR SCW 95 that,

> "11. The clear position therefore is that any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only

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thereafter.

12. The above position was highlighted in Suresh Chand Jain v. State of M.P. and another 2001 (2) SCC 628.

13. In Gopal Das Sindhi and ors. V. State of Assam and another (AIR 1961 SC 986) it was observed as follows :

> "When the complaint was received by Mr.Thomas on August 3, 1957, his order, which we have already quoted, clearly indicates that he did not take cognizance of the offences mentioned in the complaint but had sent the complaint under Section 156(3) of the Code to the Officer Incharge of Police Station Gauhati for investigation. Section 156 (3) states "Any Magistrate empowered under Section 190 may order such investigation as above-mentioned". Mr.Thomas was certainly a Magistrate empowered to take cognizance under Section 190 and he was empowered to take cognizance of an offence upon receiving a complaint. He, however, decided not to take cognizance but to send the complaint to the police for investigation as Sections 147, 342 and 448 were cognizable offences. It was, however, urged that once a complaint was filed the Magistrate was bound to take cognizance and proceed under Chapter XVI of the Code. It is clear, however, that Chapter XVI would come into play only if the Magistrate had taken cognizance of an offence on the complaint filed before him, because Section 200 states that a Magistrate taking cognizance of an offence on complaint shall at once examine the complaint and the witnesses present, if any, upon oath and the substances of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. If the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of the filing of the complaint. We cannot read the provision of Section 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the

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> complaint disclose the commission of any offence. We are unable to construe the word 'may' in Section 190 to mean 'must'. The reason is obvious.

9. Therefore, in view of the well settled principle of law laid down by the Apex Court, it is crystal clear that the complaint, disclosing the cognizable offence, may well justified the Magistrate in sending the complaint under Section 156 (3) of Cr.P.C. to the police for investigation. In the above said decision, the Hon'ble Supreme Court also made it clear that in such case where the Magistrate directs the concerned police officer to register the First Information Report, it is the mandatory duty of the police official to record and register the First Information Report and he can take the further steps contemplated under Chapter XII of the Code.

10. Therefore, this Court, in view of the above said sequence of events and in view of the admitted fact that the first respondent has yet to take any action and not even registered the First Information Report on the basis of the complaint preferred by the petitioner herein dated 07.07.2006 as referred by the learned Magistrate through his order dated 27.09.2006 to register the First Information Report and to investigate into the matter in accordance with law and to file the final report, is constrained to direct the second respondent to register F.I.R., investigate into the matter in accordance with law and to file the final report within a period of six months from the date of receipt of order copy of this court.

11. In this matter it is also made clear that though this Court heard the arguments of the learned counsel for the proposed accused the settled position of law is very clear to the effect that the proposed accused persons have no locus standi to raise their voice and object for registering the case.

12. It is open to the Investigating Agency to proceed and collect the materials from the witnesses in accordance with law.

13. With this direction, this petition is ordered accordingly. Consequently, connected Miscellaneous Petition is closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Deputy Commissioner of Police,
   Central Crime Branch,
   Egmore,
   Chennai - 600 008.

2. Sub-Inspector Police,
   Central Crime Branch,
   (Land Grabbing Section),
   Thousand Lights Police Station,
   Chennai.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.R.Karthikeyan, Advocate Sr 8663

GB (CO)
km/14.3.

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